Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 2001

NELSON FERNANDES, et al,

Petitioner,

v.

SPARTA TOWNSHIP COUNCIL, et al,

Respondent.

On Petition for Writ of Certiorari
Of The Supreme Court of New Jersey

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Denville, N.J. 07834

33pp

QUESTIONS PRESENTED

1. Did the N.J. Supreme Court's denial of leave to appeal deny petitioner his right to a review to decide if the judge is biased and should be disqualified before trial.

2. Did the denial of leave conflict with the decisions in each of the reasons for granting this petition.

3. Is an order denying a motion to disqualify the opposing attorney a collateral order subject to interlocutory appeal.

4. Does the actions of the N.J. Supreme Court in this petition and petition 01-129 create the appearance of a Supreme Court policy to avoid judicial bias.

5. If an appellate court (sua sponte) denies leave based on a portion of a case that appears unrelated on its face, does fundamental fairness require that court to state its reasons in order to provide notice of its departure from the arguments so it can be addressed on reconsideration.

TABLE OF CONTENTS

Statement of the Orders Entered..... 1
Statement of the Basis for Jurisdiction..... 1
Statement of the Case..... 1

I - Reasons for Granting the Petition

1. Both Courts Denied Leave to Hear a Collateral Order.. 6
2. Both Courts Refused to Apply the Law..... 7
3. Both Courts Fail to Satisfy the Appearance of Justice ...7
4. Both Courts Denied Petitioner Due Process 7
5. Both Courts Show a Deep-Seated Favoritism..... 8
6. Both Courts Grant Leave to Hear Collateral Orders 8
7. Both Courts Violated the Doctrine of Stare Decisis.....9
8. Conduct Prejudicial to the Administration of Justice ... 9
9. Both Courts Undermine Public Confidence 10
10. Both Courts Rulings Prove Bias by Being Blatant..... 10
11. The Order Denying Recusal is a Collateral Order.....11
12. The Court Showed Bias on a Pure Question of Law ...13
13. Extraordinary Circumstances That Prove Injury 14
14. Both Courts Took a Property Interest 15
15. Both Courts Acted in Bad Faith 16
16. Both Courts Violated Canon 3..... 16
17. Both Courts Rule by Lawless Judicial Action..... 17
18. Both Courts Denied Petitioner Equal Protection 18
19. Both Courts Denied Petitioner Fundamental Fairness. 18
20. Both Courts Denied a Review of Federal Claims 20
21. Both Courts Have an Unconstitutional Bias..... 21
22. Possible Reliance on an Inapplicable Ruling..... 22
23. Petitioner's Charge of a Systemic Bias.....23

CONCLUSIONS..... 24

TABLE OF AUTHORITIES

Cases

Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (U.S.1995) 9
Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, (1986)..... 10, 11
Albright v. Oliver, 114 S. Ct. 807, fn.21 (01/24/94) 3
American-Arab Anti-Discrimination Comm., 525 U.S. 471 (1999). 14
Bracy v. Gramley, 520 U.S. 899 (1997)..... 13
Edward H. Schad v. Aeizona, 501 U.S. 624 (1991). 18
Ferguson v. Moore-McCormack Lines, 352 U.S. 521 (02/25/57)..... 17
Frank v. Mangum, 237 U.S. 309 15
Hobby v. U.S.,468 U.S. 339, (1984)..... 10
Horey v. Tarr, 470 F.2d 775 (2nd Cir. 12/15/1972) 6
In The Matter of Ozell Eplin, No. 20106, (WV.13 S.Ct.992). 16
In re Riva, 157 N.J. 34, 722 A.2d 933 (N.J. 02/05/1999)). 1
Jeffrey B. Peterson & Assoc. v. Dayton Metro. Housing, No. 17306 (Ohio App. Dist.2 07/21/2000)..... 16
Kevin Albright v. Roger Oliver, 114 S. Ct. 807 (1994)..... 17
Lauro Lines v. Chasser et al., 490 U.S. 495 (1989) 1, 11
Liljeberg v. Health Services, 486 U.S. 847 (1988). 9
Liteky v. U.S., 114 S.Ct. 1147 (1994)..... 7, 8, 13, 22, 23
Magill v. Casel, 238 N.J.Super. 57 (A.D. 1990). 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
McGautha v. California, 402 U.S. 183 (1971) 20
Middlesex County Ethics Comm. v. Garden State Bar Assoc, 457 U.S. 423 (06/21/82)..... 14
Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456..... 4, 6
Moore v. Dempsey, 261 U.S. 86 15
Neder v. U.S., 527 U.S. 1, 119 S.Ct. 1827 (1999) 3, 12
Palazzolo v. Rhode Island, No. 99-2047 (2001) 12, 15
Peters v. Kiff, 407 U.S. 493 (1972)..... 7
Pima Cnty. Assessor v. Arizona St. Bd. of Equal., 987 P.2d 815 (Ariz.A.D.1 09/30/1999))..... 4
Reardon v. Marlayne Inc., 83 N.J. 460, 465 (1980)..... 2, 19
Reno v. American-Arab Anti-Disc. Comm., 525 U.S. 471(1999)..... 14
Reserve Mining Co. v. Lord, 529 F.2d 181 (8th Cir.1976). 17
State v. Marshall..... 1, 2, 3, 4, 6, 10, 13, 14, 15, 17, 22, 23
State v. Storm, 141 N.J. 245 (N.J. 1995)..... 8, 18, 19, 22
Stivers v. Pierce, 71 F.3d 732 (9th Cir. 1995)..... 21

Thorpe v. Housing Auth. City Durham, 393 U.S. 268,.....3, 7
Truax at al. v. Corrigan et al., 257 U.S. 312 (1921).....10, 18
Tumey v. Ohio, 273 U. S. 510 (1927).....4, 11, 14, 15, 20, 22
TXO Prod. Corp. v. Alliance Res., 113 S. Ct. 2711(1993).....19
U.S. v. Goodwin, 457 U.S. 368 (1982).....12, 19
Ward v. Village Monroeville, 409 U.S. 57 (1972).....1, 4. 5, 6
11, 14, 15, 20, 22, 23
Welch v. Texas Dept. of Hwy and PT., 483 U.S. 468, 494 (1987).....9
Wolff v. McDonnell , 418 U.S. 539 (1974) 12, 15

Statutes

28 U.S.C.A. 1257, 1291, 2101, 2104, 21061

Rules

Rule 10(b)&(c).....1, 6, 7, 10, 17
Rule 1:12(f)..... ...2, 3, 5, 16, 20

Other

Black's Dict. 6
Canon 3.....16

PARTIES

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Statement on the Orders Entered

Four orders are pertinent to this petition;

Law Div. order denying recusal & disqualification – PA D

Law Div. order denying a stay – PA C

App. Div. order denying leave to appeal that order – PA B

Sup. Ct. order denying leave to appeal prior order – PA A

Statement of the Basis for Jurisdiction

The N.J. Supreme Court denied leave to appeal a collateral order. Lauro Lines v. Chasser et al., 490 U.S. 495 (05/22/89). This causes an irreparable injury by compelling a trial before a judge that demonstrated bias in his rulings. Ward v. Village Monroeville, 409 U.S. 57 (1972). Rule 10(b)&(c). 28 U.S.C.A. 1257, 1291, 2101, 2104, 2106.

Statement of the Case

Petitioner filed a pretrial recusal motion because the judge's earlier ruling was sufficiently blatant to prove he was biased. [1] Moreover, his ruling on the recusal motion was

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[1] "Fundamental to any consideration of possible judicial disqualification is a showing of prejudice or potential bias." . . . **of course, an error might be sufficiently blatant, and so lacking in an alternative, good faith explanation that the error would support a charge of bias.** . . . we also acknowledge that it is not necessary to prove actual prejudice on the part of the court, and that the **mere appearance of bias may require disqualification.** R. 1:12-1(f). State v. Marshall, 690 A.2d 1, 148 N.J. 89 (1997).

also sufficiently blatant by finding the recusal motion was filed out of time on the papers, which is contrary to Magill. [2] His ruling avoided having to admit his bias. He then says the attorney for Sparta did not violate any rule of ethics (PA D) though he admitted making a false statement of fact in a certification, [3] which created the appearance of impropriety as grounds for the attorney's disqualification, [4] though Canon 3 B.(3) requires the judge to report the attorney's false certification. The court then denied the motion for a stay, while allowing discovery to begin, thus arbitrarily reversing his previous ruling. (PA C) Petitioner then filed a motion for leave to appeal in the Appellate Division citing Magill. Denying petitioner's motion for leave was sufficiently blatant to prove bias. State v. Marshall. (PA B)

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[2] "**A party dissatisfied with a denial of a recusal motion may appeal . . we do not decide whether a recusal motion can be made other than in a pending case for the purposes of recusal from that case alone.** Magill v. Casel, 238 N.J.Super. 57 (A.D. 1990).

[3] "In re Kushner, 101 N.J. 397 (1986) **(three-year suspension for false certification)**" In re Riva, 157 N.J. 34, 722 A.2d 933 (N.J. 02/05/1999).

[4] The issue on this appeal is disqualification of counsel. Our decision turns on an attorney's duties to . . . **to avoid even the appearance of impropriety**, DR 9-101. . . . We granted leave to appeal, 81 N.J. 254 (1979), to address this question. Reardon v. Marlayne Inc., 83 N.J. 460, 465 (N.J. 1980).

The Supreme Court then denied a motion for leave to appeal the appellate court's denial of the motion for leave to appeal. That ruling conflicts with the express holdings of Magill and also violates Rule 1:12(f), which allows a party to move for disqualification before trial when they believe the judge is biased.[5] So, it refused to apply the law by denying leave. [6] That refusal caused a due process violation, which warrants this Court's interference, [7] even though a trial by a biased judge is reversible as a structural error. [8] Moreover, denying leave is "sufficiently blatant" by conflicting with the holdings of Magill, which proves bias. State v. Marshall. Violating this standard of review violates

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[5] **"Under our rules, the Judge of any court "shall be disqualified" . . if there is "any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so. R.1:12-1(f)""** State v. Marshall, 148 N.J. 89 (1997)

[6] "An appellate court must apply the law in effect at the time it renders its decision. Thorpe v. Housing Auth. City Durham, 393 U.S. 268, (1969).

[7] "Due Process Clause requires an impartial Judge." Albright v. Oliver, 114 S. Ct. 807, fn.21 (01/24/94)

[8] **"We have found an error to be "structural," and thus subject to automatic reversal, only** in a "very limited class of cases." . . . Tumey v. Ohio, 273 U. S. 510 (1927) **(biased trial Judge)."** Neder v. U.S., 527 U.S. 1, (1999).

the state and federal due process clauses. [9] Both appellate courts are in conflict with the express holdings of Magill, which makes the order appealable [10] in a pending case [11] in accordance with rulings of this Court. [12] So, this Court should act before a trial causes the irreparable injury.

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[9] **"A state court may, of course, apply a more stringent standard of review** as a matter of state law under the State's equivalent to the Equal Protection or Due Process Clauses." Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (01/21/81).

[10] **"A party dissatisfied with a denial of a recusal motion may appeal . . we do not decide whether a recusal motion can be made other than in a pending case for the purposes of recusal from that case alone.** Magill v. Casel, 238 N.J.Super. 57 (A.D. 1990).

[11] "We read the term "pending" as having its plain meaning. Black's Law Dictionary defines "pending" as: Begun, but not yet completed; during; before the Conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment. Awaiting an occurrence or Conclusion of action . . . **Thus, an action or suit is "pending" from its inception until the rendition of final judgment**. Black's Law Dict. 1134 (6th ed. 1990)." Pima Cnty. Assessor v. Arizona St. Bd. of Equal., 987 P.2d 815 (Ariz.A.D.1 09/30/1999).

[12] **"He seasonably raised the objection and was entitled to halt the trial because of the disqualification of the Judge."** Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 4379 (1927); **". . it is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial Judge in the first instance."** Ward v. Village Monroeville, 409 U.S. 57 (11/14/1972).

The following reasons will show the N.J. Supreme Court violated numerous legal principles to deny leave to appeal a collateral order that deals with the disqualification of the judge and the attorney for Sparta, which has nothing to do with the merits of the case. Therefore, leave should have been granted based on established N.J. case law. Although the order is interlocutory it meets all the criteria for a collateral order that should be reviewed by this Court. (Argument 11 on page 11)

The actions of the N.J. Supreme Court in this case and in the petition for an Extraordinary Writ 01-129, supports the inference that a systemic bias exists to avoid disqualifying judges for bias, which creates the appearance of allowing that bias in order to bring cases to an unconstitutional conclusion.

Please understand that the following is not intended to speak harshly of judges. It is intended to point out a bias so in favor of local government that the courts view any action against government as a personal attack, so they become defensive and act in a manner that fails to recognize they are violating the very principles they are sworn to uphold. Therefore, if I am timid by withholding arguments that can prove that bias exists, then this Court cannot assume its supervisory role.

I - Reasons for Granting the Petition

The authorities and facts cited in this petition are part of every reason as though fully set forth therein.

1. Both Courts Denied Leave to Hear a Collateral Order

Petitioner presented both Appellate Courts with a collateral order denying recusal (PA D) which requires a review [13] in a pending case. [14] Denying leave contrary to Magill may cause irreparable injury since petitioner is **"entitled to an impartial Judge in the first instance"** Ward v. Village Monroeville, 409 U.S. 57 (1972). So, both courts acted in a "blatantly lawless" [15] and "sufficiently blatant" manner, which proves bias. State v. Marshall, 148 N.J. 89 (1997) (blatant rulings supports a charge of bias).

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[13] **"A party dissatisfied with a denial of a recusal motion may appeal . . we do not decide whether a recusal motion can be made other than in a pending case for the purposes of recusal from that case alone.** Magill v. Casel, 238 N.J.Super. 57 (A.D. 1990).

[14] **"An action or suit is "pending" from its inception until the rendition of final judgment."** Black's Law Dict. 1134 (6th ed. 1990).

[15] "The complete disregard of the clear and express provision of the regulation [case law] and the brushing aside of the registrant's [litigant's] right to have it considered in his case constituted "blatantly lawless" acts by Selective Service [the judge], Oestereich v. Sel. Ser. Sys. Local Bd., 393 U.S. 233, 238, 89 S. Ct. 414, 21 L. Ed. 2d 402 (1968)." Horey v. Tarr, 470 F.2d 775 (2nd Cir. 12/15/1972).

2. Both Courts Refused to Apply the Law

Denying leave to appeal was a refusal to apply the law of Magill,[16] which expressly entitled plaintiff to an appeal. Rule 10(c).

3. Both Courts Fail to Satisfy the Appearance of Justice

Denying leave contrary to Magill fails to satisfy the appearance of justice, thus conflicting with a relevant decision of this Court. Rule 10(c). [17]

4. Both Courts Denied Petitioner Due Process

Denying leave to appeal contrary to the express holdings of Magill creates the appearance of bias, which is a denial of due process. [18]

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[16] "**An appellate court must apply the law in effect at the time it renders its decision . . . this same reasoning has been applied where the change was constitutional, statutory, or judicial.** Thorpe v. Housing Auth. City Durham, 393 U.S. 268, 89 S. Ct. 518 (01/13/69).

[17] "**Justice must satisfy the appearance of Justice**" . . "Justice should not only be done, but should manifestly and undoubtedly be seen to be done" . . **"preserving the appearance and reality of fairness"** which 'generates the feeling, so important to a popular government, that Justice has been done' Liteky v. U.S., 114 S.Ct. 1147 (1994)

[18] "Even if there is no showing of actual bias in the tribunal, this Court has held that **due process is denied by** circumstances that create the likelihood or **the appearance of bias.**" Peters v. Kiff, 407 U.S. 493 (1972).

5. Both Courts Show a Deep-Seated Favoritism

Denying leave contrary to the express holdings of Magill reflects a "deep-seated favoritism" in favor of the judge and Sparta without an extra-judicial source. [19]

6. Both Courts Grant Leave to Hear Collateral Orders

Both Courts recognized that leave should be granted and previously granted leave to hear a collateral order related to either the impartiality of a judge or the removal of a county prosecutor before trial. [20] So, the refusal to grant leave contrary to the express holdings of Magill is a clear violation of the established legal principle of granting leave to hear collateral orders in this state.

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[19] "**Judicial rulings alone almost never constitute valid basis for a bias or partiality motion . . and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extra-judicial source is involved.** Almost invariably, they are proper grounds for appeal, not for recusal. Liteky v. U.S., 114 S.Ct. 1147 (1994)

[20] "Of course, the defendant has **a right to a fair trial before an impartial Judge and . . prosecutor . . .** The Appellate Division granted leave to appeal . . finding that Hedesh had a conflict of interest that impinged on Storm's right to a fair trial. . . **directed the municipal court to order the municipal prosecutor to prosecute the complaints.** . . . We hold further that Hedesh should not be allowed to prosecute Storm.." State v. Storm, 141 N.J. 245 (N.J. 1995).

7. Both Courts Violated the Doctrine of Stare Decisis

Denying leave contrary to the express holdings of Magill was a departure from the doctrine of stare decisis by failing to provide special justification, [21] which is of fundamental importance to the rule of law. [22]

8. Conduct Prejudicial to the Administration of Justice

The clear violation of the explicit holdings of Magill by both appellate courts was prejudicial to the administration of justice [23] by not reasonably appearing to be disinterested as well as be so in fact.

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[21] ". **any departure from the doctrine of stare decisis demands special justification**. . . stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience. . in such a situation, special justification" exists to depart from the recently decided case." Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (U.S.1995).

[22] "The doctrine of **stare decisis is of fundamental importance to the rule of law.**" Welch v. Texas Dept. of Highways and Public Trans., 483 U.S. 468, 494 (1987).

[23] "The guiding consideration is that the administration of Justice should reasonably appear to be disinterested as well as be so in fact." Public Utilities Comm'n of D.C. v. Pollak, 343 U.S. 451, 466-467 (1952) (Frankfurter, J., in chambers). Liljeberg v. Health Services Acquisition, 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (06/17/88).

9. Both Courts Undermine Public Confidence

Ruling contrary to the mandate in Magill, proves invidious prejudice and favoritism, which destroys public confidence in the integrity of the judiciary. [24] Hence, it conflicts with a relevant decision of this Court. Rule 10(c).

10. Both Courts Rulings Prove Bias by Being Blatant

This Court found a state Supreme Court ruling was unconstitutional as the result of bias. [25] Denying leave contrary to Magill supports petitioner's charge of bias based on the holding of State v. Marshall, as well as, being a denial of equal protection. [26]

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[24] "Public confidence in the integrity of the judiciary is diminished whenever invidious prejudice seeps into its processes. Hobby v. U.S.,468 U.S. 339, 104 S. Ct. 3093, 82 L. Ed. 2d 260, 52 U.S.L.W. 5001 (07/02/84).

[25] **The violation of the Due Process Clause occurred when Justice Embry sat on this case, for it was then the danger arose . . .** that requires us to vacate the judgment of the Alabama Supreme Court. Aetna Life Ins. Co. v. Lavoie et al, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (04/22/86).

[26] "Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly **a denial of equal protection of the laws** to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." Truax at al. v. Corrigan et al., 257 U.S. 312, 66 L. Ed. 254 (12/19/21)

11. The Order Denying Recusal is a Collateral Order

Justice Scalia's opinion in Lauro Lines v. Chasser et al., 490 U.S. 495 (05/22/89) outlined the criteria for a collateral order. The [following] meets **each point** to show the order denying recusal was appealable. (PA D)

(1) **"We said that it permits interlocutory appeal of final determinations of claims that are not only "separable from, and collateral to, rights asserted in the action, . ."** [An order denying a recusal motion is separable and collateral since judges cannot have an interest in the case.[27]] (1a) **But also, we immediately added, " too important to be denied review."** and (2) **"We said that in order to qualify for immediate appeal the order must involve "an important right which would be 'lost, probably irreparably,' if review had to await final judgment."** [Petitioner's right "to an impartial judge in the first instance" would be "lost, probably irreparably" [28] even though a trial by a biased judge must be reversed as

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[27] **"No man is permitted to try cases where he has an interest in the outcome."** 349 U.S., at 136. Aetna Life Ins. Co. v. Lavoie et al., 475 U.S. 813 (04/22/86).

[28] **"He . . was entitled to halt the trial because . .."** Tumey **"A party dissatisfied with a denial of a recusal motion may appeal."** Magill **"It is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial Judge in the first instance."** Ward

fundamentally unfair. [29] Second, petitioner is denied his property interest in the right to appeal created by Magill [30] by denying leave to appeal.[31] Third, an institutional bias may also cause irreparable injury.[32] Fourth, the Supreme Court's bias by violating Magill in so many ways would cause an irreparable injury if this Court denies certiorari.] (3) **"We**

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[29] "A limited class of fundamental constitutional errors is so intrinsically harmful as to require automatic reversal without regard to their effect on a trial's outcome. Such errors infect the entire trial process and necessarily render a trial fundamentally unfair. . . (biased trial Judge). Neder v. U.S., 527 U.S. 1, (U.S. 06/10/1999).

[30] "Lujan v. G & G Fire Sprinklers, Inc., 532 U. S. ___ (2001) (holding, in a different context, that, if a party's only relevant property interest is a claim of entitlement to bring an action, the provision of a forum for hearing that action is all that is required to vindicate that property interest). Palazzolo v. Rhode Island, No. 99-2047 (U.S. 06/28/2001)

[31] "The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests. Wolff v. McDonnell , 418 U.S. 539, 94 S. Ct. 2963 (06/26/74).

[32] "The decisions in these cases reflect a **recognition by the Court of the institutional bias inherent in the judicial system against the retrial of issues that have already been decided.** The doctrines of stare decisis, res judicata, the law of the case, and double jeopardy all are based, at least in part, on **that deep-seated bias . . the same institutional pressure that supports them might also subconsciously motivate a . . judicial response to a defendant's exercise of his right to obtain a retrial of a decided question.** U.S. v. Goodwin, 457 U.S. 368 (06/18/82).

said that the order must "resolve an important issue completely separate from the merits of the action." [A fair trial in a fair tribunal is a due process requirement, not one of the merits of the action. [33]] Therefore, this Court should hear this petition dealing with a collateral order.

12. The Court Showed Bias on a Pure Question of Law

The pretrial motions for recusal and leave were on the papers. So, there was no bias created by trial, [34] making this a "pervasive bias" exception to the "extrajudicial source". The issue was a question of law as to whether the judge's rulings were sufficiently blatant so as to prove bias or the appearance of bias. State v. Marshall. Denying leave avoided that Court's duty, which is proof of an institutional bias as described in the petition for an Extraordinary Writ 01-129.

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[33] "The floor established by the Due Process Clause clearly requires a "fair trial in a fair tribunal," Withrow v. Larkin, 421 U. S. 35, 46 (1975), before a judge with no actual bias against the defendant" Bracy v. Gramley, 520 U.S. 899, 117 S.Ct. 1793, 138 L.Ed.2d 97, 65 USLW 4435 (06/09/97).

[34] "The Judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the Judge's task. Liteky v. U.S., 114 S.Ct. 1147 (1994).

13. Extraordinary Circumstances That Prove Injury

Even if this Court believes the state appellate courts acted without bad faith, their denial of leave is "sufficiently blatant" to prove bias, which is an extraordinary circumstance that would cause an irreparable injury [35] by not determining if the judge is biased, which requires this Court's interference. [36] Their refusal to apply Magill proves actual bias based on the standard of review in State v. Marshall, 148 N.J. 89 (1997) (blatant rulings supports a charge of bias). Denying leave has caused an "irreparable injury" by denying petitioner the appeal required by Magill, which is consistent with the holdings of Tumey and Ward. Therefore, their arbitrary denial of leave has deprived petitioner of his right to stop the trial to determine if the judge is impartial in the first instance. Tumey.

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[35] "The Court observed that there may be other "extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment," Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (U.S. 02/24/1999).

[36] "Younger v. Harris, supra, and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." Middlesex County Ethics Comm. v. Garden State Bar Assoc., et al., 457 U.S. 423 (06/21/82).

14. Both Courts Took a Property Interest

Petitioner had a property interest in an appeal that vested when the lower court denied the recusal motion because **"A party dissatisfied with a denial of a recusal motion may appeal."** This ruling from Magill is consistent with Tumey, Ward, and State v. Marshall by requiring judges to render unbiased rulings. By denying leave, the Court took the property interest that requires a forum for hearing that appeal, [37] which interfered with the course of justice. [38] Therefore, this Court should provide or compel the hearing [39] needed "to vindicate that property interest" and "justice."

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[37] Lujan v. G & G Fire Sprinklers, Inc., 532 U. S. ___ (2001) (holding, in a different context, that, if a party's only relevant property interest is a claim of entitlement to bring an action, the provision of a forum for hearing that action is all that is required to vindicate that property interest). Palazzolo v. Rhode Island, No. 99-2047 (U.S. 06/28/2001).

[38] "When a state deprives a person of liberty or property through a hearing held under . . circumstances which necessarily interfere with the course of Justice, it deprives him of . . property without due process of law. Moore v. Dempsey, 261 U.S. 86; Frank v. Mangum, 237 U.S. 309.

[39] "The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests. Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168 (1951)." Wolff v. McDonnell, 418 U.S. 539 (06/26/74).

15. Both Courts Acted in Bad Faith

The failure of both court to comply with the express holdings of Magill is "sufficiently blatant to support an inference of "bad faith". [40]

16. Both Courts Violated Canon 3

Rule 1:12-1(f) [41] requires judges to disqualify themselves when there is a reason, which might preclude them from providing a fair and unbiased hearing. The failure of the lower court and appellate judges from doing so, after violating the express holdings of Magill proves a violation of Canon 3. [42]

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[40] **"Bad faith, "although not susceptible of concrete definition, embraces more than bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another."** Slater v. Motorists Mut. Ins. Co. (1962), 174 Ohio St. 148, syllabus." Jeffrey B. Peterson & Assoc. v. Dayton Metro. Housing, No. 17306 (Ohio App. Dist.2 07/21/2000).

[41] R.1:12-1. The judge of any court **shall** be disqualified on the court's own motion and **shall not sit in any matter . . . (f) when there is any other reason which might preclude a fair and unbiased hearing and judgment.**

[42] **"It is clearly established that a magistrate can violate Canon 3 of the Judicial Code of Ethics by failing to adhere to court rules** or administrative procedures." In The Matter of Ozell Eplin, No. 20106, 1992.WV.13 (S.Ct.992).

17. Both Courts Rule by Lawless Judicial Action

Both Appellate Courts acted in a "sufficiently blatant" manner by refusing to grant leave contrary to Magill. Even if those Courts were merely timid [negligent] about reviewing a charge of bias against a lower court judge, [43] or were motivated by a systemic bias that reaches from the lowest to the highest court, is of no consequence. Either reason is lawless and conflicts with a relevant decision of this Court. Rule 10(c).[44] Their refusal to apply the law of Magill violated petitioner's right to an impartial judge which represents autocratic rule [45] and a denial of due process, which proves they are biased. [46]

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[43] "An error might be sufficiently blatant, and so lacking in an alternative, good faith explanation that the error would support a charge of bias." State v. Marshall, 148 N.J. 89.

[44] **A timid Judge, like a biased Judge, is intrinsically a lawless Judge."** Wilkerson v. McCarthy, 336 U.S. 64, 65 (concurring). Ferguson v. Moore-McCormack Lines, 352 U.S. 521, 77 S. Ct. 457, 1 L. Ed. 2d 511 (02/25/57).

[45] **"Our system of government is premised upon subservience to the rule of law. If a judge in the exercise of judicial power loses sight of these principles, the result is autocratic rule by lawless judicial action."** Reserve Mining Co. v. Lord, 529 F.2d 181 (8th Cir.1976).

[46] "fn. 21. Similarly, we have held that the Due Process Clause requires an impartial Judge." Kevin Albright v. Roger Oliver, 114 S. Ct. 807, 127 L. Ed. 2d 114, 62 U.S.L.W. 4078 (01/24/94).

18. Both Courts Denied Petitioner Equal Protection

The Appellate and Supreme Courts of this state previously granted leave to appeal a "collateral order". [47] Therefore, denying petitioner leave contrary to the express holdings of Magill was a denial of equal protection. [48]

19. Both Courts Denied Petitioner Fundamental Fairness

Denying an appellate review contrary to federal and state law is a drastic departure from traditional conceptions of due process, [49] which draws attention to the appellate judges. Their conduct supports the following inferences. [50]

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[47] "Defendant has **a right to a fair trial before an impartial Judge.**" State v. Storm, 141 N.J. 245 (N.J. 1995).

[48] "Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly **a denial of equal protection of the laws** to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." Truax at al. v. Corrigan et al., 257 U.S. 312, 66 L. Ed. 254 (12/19/21).

[49] **"Fundamental fairness" analysis may appropriately be applied to departures from traditional American conceptions of due process;** but when Judges test their individual notions of "fairness" against an American tradition that is deep and broad and continuing, **it is not the tradition that is on trial, but the Judges.**" Edward H. Schad v. Aeizona, 501 U.S. 624, 111 S. Ct. 2491 (1991).

[50] "'Fundamental fairness requires that impermissible influences such as **bias and prejudice be discovered** nonetheless, **by inference** if not by direct proof. TXO Prod. Corp. v. Alliance Res., 113 S. Ct. 2711 (1993).

First, both courts have denied leave to appeal contrary to the express holdings of Magill, which supports the inference that if they are willing to ignore the law at this stage, which means they have proved a willingness to ignore the law at any stage including appeal.

Second, the Supreme Court granted leave to appeal collateral orders in the past, Reardon v. Marlayne Inc., 83 N.J. 460, 465 (N.J. 1980) (leave to appeal granted for disqualification of an attorney), which supports the inference that the appellate courts refused to grant leave is the result of a systemic bias favoring towns.

Third, both Courts previously granted leave to appeal after recognizing the need for an impartial judge and prosecutor. State v. Storm, 141 N.J. 245 (N.J. 1995). Denial of leave in this case supports the inference that the Appellate Courts have a systemic bias against those who sue towns.

Fourth, denying leave before trial supports the inference that appellate courts do so, so they can find the "bias . . were properly and necessarily acquired in the course of the proceedings" on appeal. Liteky v. U.S., 114 S.Ct. 1147 (1994). Therefore, interlocutory appeals would prevent the intermingling of issues in order to avoid confusion.

20. Both Courts Denied a Review of Federal Claims

Although the trial involves state issues, petitioner is still entitled to an impartial judge. Both appellate courts refused to provide an **"adequate opportunity for review of those federal claims"** [51] [impartial judge] by denying the motion for leave to review the denial of a recusal motion contrary to Tumey, Ward, Magill, and R.1:12-1(f). The Appellate and Supreme Courts' denial of the motion for leave subjects petitioner to the "irreparable injury" of proceeding with a trial before a judge he believes is biased, which denies him an impartial judge in the first instance.

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[51] "Second, **even where the only rights to be adjudicated are those created and protected by state law, due process requires that state procedures be adequate to allow all those concerned a fair hearing of their state-law claims.** Boddie v. Connecticut, 401 U.S. 371 (1971); Covey v. Town of Somers, 351 U.S. 141 (1956); Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950). Third, **where federally protected rights are involved, due process commands not only that state procedure be adequate to assure a fair hearing of federal claims,** In re Gault, 387 U.S. 1 (1967), **but also that it provide adequate opportunity for review of those federal claims where such review is otherwise available.** Goldberg v. Kelly, 397 U.S., at 271; Boykin v. Alabama, 395 U.S. 238, 242-244 (1969); Jackson v. Denno, 378 U.S. 368, 387 (1964). cf. North Carolina v. Pearce, 395 U.S. 711, 725-726 (1969); In re Murchison, 349 U.S. 133, 136 (1955). McGautha v. California, 402 U.S. 183, 91 S. Ct. 1454 (05/03/71)

21. Both Courts Have an Unconstitutional Bias

Both Courts preJudged the right to appeal by denying leave contrary to Magill, thus displaying a lack of honesty and integrity.[52] Moreover, the N.J. Supreme Court's conduct as described in petition 01-129 to this Court also shows it did not apply a constitutional standard of review in order to avoid "sufficiently blatant" rulings. It also avoided a motion for leave to file a second motion for rehearing to address a manifest denial of justice in violation of court rules by involving the Clerk of that Court. That misconduct was an attempt to deny this Court jurisdiction. Therefore, the N.J. Supreme Court has taken lawless steps in two separate cases when it involved issues of bias by two different judges, which supports petitioner's belief that a systemic bias exists to dispose of cases through bias.

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[52] "In attempting to make out a claim of unconstitutional bias, a plaintiff must "overcome a presumption of honesty and integrity" on the part of decisionmakers. Withrow, 421 U.S. at 47. He must show that the adjudicator "has preJudged, or reasonably appears to have preJudged, an issue." Kenneally v. Lungren, 967 F.2d 329, 333 (9th Cir. 1992) (quoting Partington v. Gedan, 880 F.2d 116, 135 (9th Cir. 1989) (Reinhardt, J. Concurring and Dissenting)), cert. denied, 113 S. Ct. 979 (1993). Stivers v. Pierce, 71 F.3d 732 (9th Cir. 12/01/1995).

22. Possible Reliance on an Inapplicable Ruling

Neither party argued the ruling in footnote [53] because the motion for leave did not seek an "advisory evaluation". Denying leave based on this segment without so stating that fact would be a denial of fundamental fairness, because it conceals the court's (sua sponte) denial of leave in reliance of a point unrelated to petitioner's right to an impartial judge at trial. [54] Such any arbitrary departure from the arguments leaves plaintiff unaware of this fact in order to point out that it is contrary to stare decisis, on reconsideration. [55]

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[53] **A party may not seek appellate review of an adverse interlocutory order without seeking relief from the outcome of the litigation as embodied in the judgment.** A litigant satisfied with the judgment cannot have an **advisory appellate evaluation** of an alleged interlocutory error. Magill v. Casel, 238 N.J.Super. 57 (App.Div. 01/22/1990)

[54] "**He seasonably raised the objection and was entitled to halt the trial because of the disqualification of the Judge.**" Tumey v. Ohic, 273 U.S. 510, 47 S. Ct. 4379 (1927); ". . **it is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial Judge in the first instance.**" Ward v. Village Monroeville, 409 U.S. 57 (11/14/1972).

[55] "Of course, the **defendant has a right to a fair trial before an impartial Judge** and . . prosecutor . . . The **Appellate Division granted leave to appeal** . . directed the municipal court to order the municipal prosecutor to prosecute the complaints. . . We hold further that Hedesh should not be allowed to prosecute Storm." State v. Storm, 141 N.J. 245 (N.J. 1995).

23. Petitioner's Charge of a Systemic Bias

This Court knows that "judicial rulings alone" are "almost invariably . . proper grounds for appeal, not for recusal" [56] or, that **"a favorable or unfavorable preDisposition can also deserve to be characterized as "bias" or "prejudice".** [57] The holdings of State v. Marshall goes beyond the latter when rulings are sufficiently blatant. [58] So, the violation of Magill supports petitioner's charge of a systemic bias by these appellate courts.

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[56] **"Judicial rulings alone almost never constitute valid basis for a bias or partiality motion . . and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extra-judicial source is involved.** Almost invariably, they are proper grounds for appeal, not for recusal. Liteky v. US, 114 S.Ct. 1147 (1994).

[57] "A favorable or unfavorable preDisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts **adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment.** (That explains what some courts have called the "pervasive bias" exception to the "extrajudicial source" doctrine." Liteky v. U.S., supra.

[58] **"An error might be sufficiently blatant, and so lacking in an alternative, good faith explanation that the error would support a charge of bias.** . . . we also acknowledge that it is not necessary to prove actual prejudice on the part of the court, and that the **mere appearance of bias may require disqualification**. R. 1:12-1(f). State v. Marshall, 690 A.2d 1, 148 N.J. 89 (1997).

CONCLUSIONS

The foregoing shows the N.J. Supreme Court has granted leave to appeal interlocutory collateral orders in the past. However, it has refused to grant leave in this case in clear violation of the holdings of Magill. The Supreme Court's error is sufficiently blatant in order to support petitioner's charge of a systemic bias. Their conduct in petition 01-129 supports the further inference that the N.J. Supreme Court is willing to take affirmative steps to avoid rulings that would replace judges that have displayed a bias in their rulings in support of its systemic bias. Therefore, petitioner asks this Court to grant certiorari, and a stay so a trial does not cause irreparable injury. Moreover, this Court should provide whatever other relief is appropriate to deal with the conduct displayed between both petitions.

A

Nelson Fernandes, et al,	SUPREME CT of NJ
Plaintiff-Movants,	M-1423 Sept. Term 2000
v.	51,382
Sparta Township Council, et al.	ORDER
Defendants-Respondants.	**Entered 7/16/01**

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice at Trenton, this 12 th. Day of July, 2001.

Signed;

Stephen Townsend

Clerk of the Supreme Court

B

Nelson Fernandes, et al,	Superior Court of NJ
v.	Appellate Division
Sparta Township Council, et al.	Doc. # AM – 546 – 00T5
	Motion # 3683-00
	Filed 4/23/01

ORDERED

This matter having been duly presented to the Court, it is on this 12 th. Day of April, 2001, hereby ordered as follows;

The motion to file nunc pro tunc is granted.

The motion for stay and motion for leave to appeal are denied.

For the Court;

John E. Wallace Jr. J.A.D.

C

Nelson Fernandes, et al,	Superior Court of NJ
Plaintiff,	Law Division
v.	Doc. # MRS-L-3901-99
Sparta Township Council, et al.	Order Denying Motion
Defendants.	**Filed 2/4/01**

Motion for a stay was denied and **discovery should go forward**.

Reginald Stanton
Judge of the Superior Court
Assignment Judge

D

Nelson Fernandes, et al,	Superior Court of NJ
Plaintiff,	Law Division
v.	Doc. # MRS-L-3901-99
Sparta Township Council, et al.	Order Denying Motion
Defendants.	**Filed 1/09/01**

The court denied the following in its entirety;

A) **Judge Stanton recusing himself;**

B) **Disqualifying Mr, Laddey and his firm from representing Sparta;**

C) Change of venue;

D) Certifying the issues raised for appeal;

E) Dismissing Sparta's answer as a sanction;

F) Entering a default judgment;

G) Vacate March 17, 2000 order;

H) Strike Sparta's answer;

I) Stay the matter pending appeal;

J) **Allow discovery to begin;**

K) Report Mr. Laddey to the ethics committee for filing a false certification.

(The judge hand wrote the following)

The motion is denied for the following reasons;

1. **The motion is out of time.**
2. More importantly, the decision embodied in the order of March 17, 2000 was and is correct for the reasons stated when that order was entered.
3. **Mr. Laddey and his firm have not violated any rule of ethics.**

Reginald Stanton
Judge of the Superior Court